

# **EXHIBIT 5**

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Michael Ben-Jacob – October 11, 2021

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
MASTER DOCKET 18-MD-2865 (LAK)  
CASE NO. 18-CV-09797

IN RE:

CUSTOMS AND TAX ADMINISTRATION OF  
THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
SCHEME LITIGATION

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL  
EXAMINATION OF  
MICHAEL BEN-JACOB  
DATE: October 11, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 PROCEEDINGS

2

3 MICHAEL BEN-JACOB,

4 called as a witness, having been first

5 duly affirmed according to law, testifies as

6 follows:

7 \* \* \* \* \*

8 EXAMINATION BY MR. MAGUIRE:

9 Q Good morning, Mr. Ben-Jacob?

10 A Good morning.

11 Q My name is Bill Maguire. I'm going  
12 to be asking you some questions.

13 If there's any question that you  
14 don't understand, please don't answer it.  
15 Please just let me know you don't understand  
16 the question and give me an opportunity to  
17 clarify the question so you do understand it.

18 Is that okay?

19 A Sure. Thank you.

20 Q That way we'll have a clear record.  
21 And we will know that when you have answered  
22 a question, you understood the question.

23 Is that fair?

24 A Yes.

25 Q Now, sir, we're going to be talking

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1 about some of your former clients who are  
2 defendants in these proceedings.

3 Specifically, Mr. Markowitz, Mr. Van  
4 Merkensteijn, and Mr. Klugman.

5 Okay?

6 A Okay.

7 Q And there may be some other former  
8 clients who are not defendants who come up,  
9 specifically Mr. Stein, Mr. Lhote, and  
10 Mr. McGee.

11 Okay?

12 A Understood.

13 Q There are other entities that  
14 you've represented; Argre and Maple Point.

15 Is that right?

16 MR. DEWEY: Objection.

17 A Can you please clarify? What do  
18 you mean by "you've represented?"

19 Q You had engagements or provided  
20 services to Argre in the past.

21 Is that true?

22 A My firm provided services and was  
23 engaged by our employer, as I said,  
24 Kaye Scholer. And in that context, I did as  
25 well.

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1 Mr. Van Merkensteijn, and Mr. Klugman did  
2 with Solo Capital?

3 A Again, can you explain what you  
4 mean by "all aspects?"

5 Q Well, let me ask you.

6 Did you submit to your firm's  
7 compensation committee a memorandum in which  
8 you said that you were called upon by your  
9 longstanding Argre client to implement all  
10 aspects of annex dividend trading strategy?

11 MR. DEWEY: Objection.

12 A I'm sorry. Are you quoting from a  
13 letter or a memorandum of mine?

14 Q I'm asking you.

15 Do you recall saying that to your  
16 compensation committee?

17 A I do not recall that, saying that  
18 in that conversation.

19 Q Is it true that you were called  
20 upon by Argre to implement all aspects of  
21 annex dividend trading strategy?

22 MR. DEWEY: Objection.

23 A And I'm sorry. I just need to  
24 understand what you mean when you say the  
25 words "all."

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1 Q I'm asking you for your  
2 understanding, in your words, if you  
3 understand that's what you were called upon  
4 to do?

5 A Well, since I don't have a  
6 recollection of using those words, I would  
7 say it is not true that we were called upon  
8 to use -- to -- I say "we," meaning my  
9 firm -- was called upon to implement or  
10 advise upon all aspects.

11 We were asked to advise upon U.S.  
12 legal issues, U.S. tax and pension plan  
13 issues, and occasional other coordination of  
14 advice with foreign counsel and  
15 administrative matters.

16 But I was certainly not involved in  
17 all aspects.

18 Q Let me ask you, please, to turn to  
19 Exhibit 4480?

20 MR. MAGUIRE: Mark 4480.

21 (Whereupon the above mentioned was  
22 marked for Identification.)

23 A I'm sorry. Yes, so I have this  
24 exhibit in front of me.

25 Q And can you tell us, what is this